

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

OCT - 8 2002

OFFICE OF THE CLERK
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Review of Part 15 and Other Parts of
Commission's Rules

Petition for Waiver of Section 15.37(k)
Of the Commission's Rules

)
) *ET Docket 01-278*
) *Rm-9375*
) *Rm-10051*
)
)

**PETITION FOR RECONSIDERATION OF SECTION 15.37(k) OF THE
COMMISSION'S ORDER**

Morrison G. Cain, Esq.
INTERNATIONAL MASS RETAIL
ASSOCIATION (IMRA)
1700 N. Moore Street
Suite 2250
Arlington, VA 22209
(703) 600-2012
(703) 841-1184 FAX

Attorney for
INTERNATIONAL MASS RETAIL
ASSOCIATION (IMRA)

Dated: September 27, 2002

The International Mass Retail Association ("IMRA"), by its undersigned attorney and pursuant to Section 1.429 of the rules of the Federal Communications Commission ("the Commission"), hereby requests reconsideration of the labeling portion of transition provisions in section 15.37(k) of new marketing restrictions for radar detectors, as recently adopted by the Commission in its First Report and Order (ET Docket 01-278) and published in the August 28 *Federal Register*.

The International Mass Retail Association (IMRA)--the world's leading alliance of retailers and their product and service suppliers--is committed to bringing price-competitive value to the world's consumers. IMRA members represent over \$1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. IMRA member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans. As a full-service trade association, IMRA provides industry research and education, government advocacy, and a unique forum for its members to establish relationships, solve problems, and work together for the benefit of the consumer and the mass retail industry.

For the reasons spelled out below, IMRA respectfully requests that the Commission reconsider certain transitional labeling requirements under section 15.37(k) for radar detectors that meet the new emissions limits. In the alternative, IMRA requests that the Commission clarify that, under the transition labeling regulations, non-manufacturing retailers: may rely on manufacturer-produced packaging for any required label statements, and waive any requirement that retailers sticker individual radar detectors

meeting the new emission limits.

Due to the amount of preparation that retailers will otherwise have to undertake in very short order during the busiest time of their business year, IMRA respectfully requests the Commission to take prompt action on this requested reconsideration of the transition labeling requirements.

Background

In its *First Report and Order* (ET Docket 01-278), as modified in its disposition of requests for partial reconsideration and a stay (published in the August 28 *Federal Register*), the Commission prohibited manufacture or importation of radar detectors that do not comply with, or have not been certified as complying with RF emission limits. As a result, new stocks of radar detectors made or imported since August 28 have conformed to the new emission limits.

Recognizing that it will take some time for manufacturers to obtain the new certifications and to place required FCC numbers on complaint products, the Commission will, for the period between October 27, 2002 and January 27, 2003, also allow radar detectors which meet the emission limits to place the newly-required serial number and label on the product packaging (rather than on the product itself), and to omit a warning label from the product manual.

As modified, the Commission's rule allows sell-through of non-compliant detectors until October 27 and rejected calls for much longer sell-through deadlines (a manufacturers' group had requested either no cut-off or a deadline of July 1, 2003, while one manufacturer-retailer had sought an extension of the sell-through deadline to March 1, 2003).

As noted in the Order, IMRA has previously expressed its support for an extension that allows reasonably adequate time for retailers to identify and remove from sale non-conforming stock (estimated by the Commission at approximately 27% of all detectors in commerce at the time of its Order).

Need for Reconsideration/Waiver/Clarification of Transitional Labeling Rules

IMRA believes that the Commission has in large part already accomplished its goal of ensuring that only compliant radar detectors remain on the market. IMRA is concerned, however, that new transitional labeling requirements--for the relatively short period of time until manufacturers can put in place redesigned products and packaging--will result in substantial consumer confusion and significant burdens on retailers of radar detectors that meet the emission limits.

The immediate task for retailers who have, in the past, purchased radar detectors that do not meet the emission limits will be to identify those products, remove them from sale and return them to the manufacturer. This not only will make demands on manpower and

management attention during retailers' peak selling season, but may also involve such steps as implementing "reverse logistics" procedures and re-programming check-outs (so as to recognize and block out sales of product codes for non-compliant radar detectors), plus follow-up with customer service, buyers and vendors. As the Commission's order recognizes, these tasks must take precedence over monitoring the re-labeling of compliant detectors.

In addition, new labels may confuse consumers and retailers alike. The labeling requirement will not usefully inform consumers as to the difference between compliant and non-compliant radar detectors (which, in any event, will soon be out of the marketplace altogether). Few if any consumers are likely to understand the label's meaning.

The burden is all the more onerous because the labels are required only on detectors that meet the new emissions limits. As the Commission has noted, at the time of its initial consideration, these made up about 73% of the products being sold. Due to the already in-effect ban on the manufacture or importation of equipment that does not meet the emission limits, this percentage, and the attendant labeling burden, will increase every day throughout the transition period.

Such widespread labeling will be extremely time- and labor-intensive work, with significant expense for retailers. It will necessarily impose new costs on the sale of any radar detector product. Two large IMRA members have estimated that it will take them

approximately 4,500 man-hours merely to label detectors already in their stores and warehouses (this assessment does not take into account the costs for dealing with compliant detectors elsewhere in their supply chains which have not yet reached the retailer's inventory). They estimate that it will cost approximately \$100,000 in labor costs just to comply with the transitional labeling requirement.

The actual costs may be higher, especially if there are delays or difficulties in receiving needed information and assistance from manufacturers of affected products. The Commission's order requires manufacturers to submit specific information to the FCC to identify non-compliant detectors. IMRA encourages the FCC to share this information promptly with affected retailers, and stands ready to assist the Commission in disseminating this information to IMRA members.

Retailers who are not also manufacturers will not themselves have the specific knowledge needed to produce labels, stickers or other packaging materials. This underscores IMRA's point that the FCC should make it the manufacturer's responsibility to accomplish any re-labeling that is deemed necessary. Manufacturers, not retailers, are the source of product numbers and are familiar with the other requirements of FCC-required labels.

If the Commission nevertheless concludes that transition labeling is needed, it might consider alternatives that would be less burdensome to retailers, such as allowing shelf signage rather than stickering or labeling of each individual unit.

It is not only inefficient, but also unfair, to place on retailers the burden of re-labeling compliant detectors already in their inventory. Taking into consideration retailers are faced with a busy holiday season including Halloween, Thanksgiving and Christmas, this labeling requirement imposes an unnecessary burden on retailers, does not serve an important public interest and does not advance the Commission's most important goal of removing from sale units that do not meet the new emission limits.

Respectfully submitted,

Morrison G. Cain, Esq.
INTERNATIONAL MASS RETAIL
ASSOCIATION (IMRA)
1700 N. Moore Street
Suite 2250
Arlington, VA 22209
(703) 600-2012
(703) 841-1184 FAX

Attorney for
INTERNATIONAL MASS RETAIL
ASSOCIATION (IMRA)

September 27, 2002